

OPENING STATEMENT  
REP. JOHN B. LARSON, RANKING MINORITY MEMBER  
COMMITTEE ON HOUSE ADMINISTRATION

HEARING ON "CONTINUITY OF CONGRESS:  
SPECIAL ELECTIONS IN EXTRAORDINARY  
CIRCUMSTANCES"

WEDNESDAY, SEPTEMBER 24, 2003

Mr. Chairman, I am pleased that the House Administration Committee is resuming consideration of issues relating to the continuity of Congress. Since our hearing last year, nothing has happened to diminish the significance of the questions we will address here today, and the opportunity continues for Congress to ensure that our political institutions survive a catastrophic event which might disrupt both the personnel and the physical infrastructure required to govern our nation.

I join with the chairman in hoping that this effort will be ongoing on our committee and on the other committees in both chambers which have pieces of jurisdiction over this complex subject, and that we can enhance and refine the public debate with the contribution of the diverse group of witnesses in the panels who will testify today.

The argument has been made by some that, in dire circumstances, a crisis in the operation of Congress might not occur. It might not be necessary to conduct recorded votes, which would demonstrate the absence of a quorum. Major legislation could be passed by voice vote. The Members who remain would "do the right thing." But I don't find this kind of wishful thinking credible. The job of Members is to disagree and to resolve their differences over major areas of public policy, ultimately through voting. The Constitution provides a process and a structure of powers, and the checks and balances needed to exercise them. We are a government of laws, not of men. And we need laws--including perhaps also constitutional amendments-- to resolve questions of congressional continuity.

I want to commend Chairman Sensenbrenner and Dreier for their initiative in introducing this important legislation before us today, following up on House action last year in passing H.Res. 558, referred to our committee, which urged states to expedite special elections for the House. I also want to congratulate Congressman Frost, ranking member of the Rules Committee, for his leadership of the bipartisan working group last year which secured passage of rules changes to clarify the declaration of vacancies in the House and to provide flexible new authority to alter the times and places of meetings in exigent circumstances, and also Congressman Baird, who is continuing to explore different

approaches to reconstituting the House through a constitutional amendment.

We must fully understand the inter-relationships and ramifications of all potential statutory or constitutional remedies. These proposals are not mutually exclusive and may indeed be complementary. And certainly the subject matter before us, relating to the structure and preservation of the Constitution and the Republic itself, presents the type of issue suitable for consideration through a constitutional amendment.

We may need to buttress our 18<sup>th</sup> Century founding document to adapt to threats which the abuse of 21<sup>st</sup> Century technology undreamed of in earlier eras now poses to it. Congress grappled briefly with these issues early in the nuclear era, with the Senate's passage, on three different occasions, of constitutional amendments providing for gubernatorial appointment of House Members. Congress also agreed to set-up a refuge in West Virginia at the Greenbrier Resort, on the assumption that there would be time to travel to and take shelter there once Soviet missiles were detected. It is amazing how rapidly advances in weapons of mass destruction have trumped what now appear as naive assumptions even of that comparatively recent era.

The principal subject of our hearing today is how to replenish the membership of the House as quickly as possible in the event of a catastrophe. The House in 1906 determined that the proper constitutional definition of a quorum consisted of a majority of those Members chosen, sworn and living; the same interpretation holds in the Senate. Under such conditions, the House might technically still legislate, no matter how small its membership might be. However, such a body would not necessarily be representative either geographically or politically of the larger House which existed prior to the cataclysmic event, and could not long retain the sense of legitimacy our governmental system must maintain to command the respect of the American people.

To further compound the potential problem with a quorum, the Constitution contains no mechanism for determining questions of potential disability. Disabled Members still count as part of the quorum even if they can not appear in the House chamber, which is the ultimate test of a Member's presence.

I think we can all agree that the ideal solution would



be for the states to step up to the plate and provide more expeditious procedures in replenishing their membership in the House. After all, it is a matter of tremendous self interest for them to do so. However, states may not be able to accomplish the rapid reconstitution of the House under their current legal frameworks, and it has been argued that a Federal statute providing more uniform provisions could expedite reconvening of the House after a catastrophe.

This is what the Sensenbrenner bill attempts to do. The bill can serve as a valuable starting point for this debate. I want to commend the Judiciary Committee chairman for this initiative and urge him to also consider hearings on a variety of constitutional amendments which have been broached, subject matter that falls within the domain of that panel.

However, H.R. 2844 presents potential constitutional and practical difficulties and could require a substantial unfunded mandate on the states. It would very likely prevent compliance with the Uniformed and Overseas Civilians Absentee Voting Act. And there are important questions posed by the bill's effects on existing state laws dealing with the selection of candidates, the printing, preparation and distribution of ballots, selection and staffing of polling places, counting votes and certifying election results. There would also be only seven days, in most instances, to involve the public and conduct a campaign promising a real choice among candidates.

Our colleague from Texas, Sen. John Cornyn, who has submitted a statement for the record today, held an important hearing in the Judiciary Committee on continuity issues two weeks ago and distributed results of a questionnaire he sent to state and local officials who expressed virtually unanimous reservations about H.R. 2844. I ask unanimous consent that that document also be placed in the hearing record at this time.

In its specific examination of any proposed statute expediting special elections, this committee should determine how much time is sufficient to bring a popularly-elected House back up to a size which can simultaneously produce both a quorum to legislate as well as a body still representative of the American people. If we can find a way to do that which brings the House back into action when it is needed to act, the argument for a constitutional amendment will be reduced.

Perhaps we should enact a model special election statute which addresses some of the problems I noted, but leave it up to the states themselves to determine if they prefer it to their existing laws in a time of emergency. There is no pressing need for all such vacancies in the House--even several occurring within the same state--to be filled on the same day.

Proponents of a constitutional amendment argue that any workable and constitutional statute expediting special elections, if one could be crafted to work under circumstances which saw a majority of House members killed, would probably still leave the House unable to function for a period of five or six weeks at least. They argue that a new statute would be useful primarily as a supplement to a constitutional amendment allowing some form of temporary appointments to the House.

Mr. Chairman, I am open to supporting both a legislative approach and a constitutional amendment.

In their testimony, Chairmen Sensenbrenner and Dreier cited the *Federalist Papers* and remarks at the Constitutional Convention of our nation's great Founders, James Madison and Alexander Hamilton, on the unique nature of a House of Representatives comprised exclusively of Members elected by the people. Our colleague Sen. Leahy, former chairman and ranking member of the Judiciary Committee, said that "While the possibility that the House could be weakened by terrorist attack is frightening indeed, so too is transforming the essential nature of the People's House. Amending the Constitution should be a plan of last resort." But the Founders also created a Constitution which could be adapted to new challenges and used to restructure and



preserve itself, and it gave to Congress the ability to propose changes when needed.

The House has always been elected by the people, but how relevant is our justifiable pride in that distinction if there is in fact no functioning House of Representatives due to a catastrophe and the lack of a quorum? A House somewhat different in form from the one we know could function temporarily, as long as the new structure derived from the Constitution. The Constitution provides legitimacy. All seats would be refilled in the near future through election, and the *status quo ante* quickly restored. We currently have a president who is recognized as legitimate because he ultimately derives his existence from a constitutional process, even though another candidate received more votes from the people.

I am considering introducing a constitutional amendment which would require that, in event of a catastrophe and a sufficient number of vacancies in the House which we would define, the state legislatures would meet to appoint representatives to serve temporarily as full voting Members of the House of Representatives. There is ample precedent deriving from practices of legislatures in choosing members of the original Continental Congress, as well as their role in selecting United States Senators prior to the advent of popular election of senators in 1913.



The legislatures, which sometimes meet only in alternate years in some states, would be called into special session if necessary to achieve this objective. They could choose interim representatives who reside in the congressional district and are of the same political party as a deceased Member, and who could not run for election to the House while serving there temporarily. I realize there is great controversy about introducing the concept of party into the Constitution, but I believe it is important try to retain as much continuity with the political preferences previously expressed by the people through their votes in the most recent election as possible.

I also think that, in the event of a crisis, we want the House focused on dealing with the emergency and passing urgent legislation, not gearing up for special election campaigns. I note that Mr. Lewis in his testimony raised the idea of state legislators themselves, with their experience in a parliamentary body, serving temporarily in the House, and I think that may have merit as long as they do it to serve the country, rather than to promote themselves to higher office.

To avoid potential deadlock in the process, should the legislature fail to make a choice within 3 days after convening, the governor of the state would be authorized to make the appointments subject to the same conditions I just mentioned. And while this process was underway, the states would be organizing special elections to fill the House seats in the normal manner for the remainder of the term.

I hope the witnesses will feel free to comment on this proposal, and I congratulate the chairman for his leadership on this issue.

The CHAIRMAN. Thank the gentleman from Connecticut.

If there are no further statements, we will commence with the testimony of the panel. On the first panel, we have Chairman Sensenbrenner, Wisconsin, the Chairman of the House Judiciary Committee, the chief sponsor of H.R. 2844; Chairman David Dreier, of California, the Chairman of the House Rules Committee, who is also sponsoring H.R. 2844; Congressman Martin Frost of Texas, the ranking Democratic member on the House Rules Committee; Congressman Brian Baird, who has proposed a constitutional amendment that would permit temporary appointments if a significant member of Members are unable to serve during a national emergency; and Congresswoman Candice Miller, cosponsor of H.R. 2844. And, I would note former Michigan Secretary of State.

With that, Chairman Sensenbrenner, we will start with you.

**STATEMENT OF THE HON. JAMES SENSENBRENNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. H.R. 2844 is a responsible effort to enact a straightforward and effective procedure to replace House Members should a catastrophic attack strike the Congress. This legislation would provide for the expedited special elections for Members to fill vacancies in extraordinary circumstances, defined by the bill as occurring when the Speaker declares that there are more than 100 vacancies.

Within 14 days following such an announcement, the State political parties may nominate candidates as provided by State law, to run in the special election to be held within 21 days.

Let me say that I am not set on the 21-day deadline. I think that that deadline can be extended. But, it should not be extended unduly, because it is important that people who are elected to fill vacancies be elected very quickly, so that they can come to Washington with the mandate from their voters.

I would also state that there is no such thing as a perfect election. However, I think that an election, imperfect though it may be, is better than having appointed Members sit in the House of Representatives; and this entire issue is whether, should there be catastrophe, replacement Members of the House of Representatives should be elected by the people or appointed by some appointing authority. Elected representatives, which has always been the case, or appointed representatives, which has never been the case.

In the Federalist Papers, James Madison used the strongest of terms to state that the House must be composed only of those elected by the people. And explicitly rejected the proposition that the appointment of Members authorized by Congressional legislation is compatible with the American Republic. Therefore, the very concept offered by opponents of this legislation, a constitutional amendment that would allow for the appointment of House Members, was explicitly rejected by the Founders as antithetical to republican, with a small "R," government.

Congress has the clear constitutional authority to alter State election laws. The Founders explicitly considered Congress's power to require expedited special elections the solution to potential discontinuity of government in emergency situations.